

IN THE MATTER OF
THE APPLICATION OF
HARRY SHUMAN, ET UX
FOR A ZONING VARIANCE ON PROPERTY
LOCATED ON THE SOUTHEAST SIDE OF
HAWTHORNE AVENUE, 324' SOUTHWEST OF
REISTERSTOWN ROAD (11) AND 13
HAWTHORNE AVENUE)
3rd ELECTION DISTRICT
2nd COUNCILMANIC DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
CASE NO. 89-85-A

OPINION

This matter comes before the Board as an appeal of the decision of the Deputy Zoning Commissioner dated November 30, 1988, which denied the property owner's three petitions for variance. Specifically, the property owner seeks relief from Sections 304 and 1802.3.c.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow: (1) lot widths of 40 feet in lieu of the required 55 feet; (2) a setback of 6 feet in lieu of the required 10 feet for lot #212; and (3) building on an area lot of 4,760 square feet in lieu of the required 6,000 square feet.

The history of this case is significant in that the Petitioner previously appeared before the Zoning Commissioner and this Board in 1987. At that time, the Petitioner sought the same relief which he requests in the subject case. As was the testimony in the earlier case, evidence was presented that the subject lots, #212 and #213 in the plat of that subdivision known as Ralston, are owned by Harry Shuman; his wife, Sarah; and daughter, Sonya Shugarnan. Mr. and Mrs. Shuman occupy a house on lot #213 and have lived there for many years. According to testimony offered by their son, Jerome Shuman, his parents are elderly and in deteriorating health. It is the Petitioner's request that the petitioned variances be granted thereby enabling construction of a second dwelling on lot #212. This dwelling would be constructed so as to include improved ventilation and insulation, when compared to the existing home.

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Mr. Shuman opined that these improvements in the proposed house would provide his parents with a more comfortable environment. Also, construction of a second dwelling would benefit the estate and monetary needs of the property owners. Particularly, the lot with the existing improvement thereon could be sold to raise capital to finance the Shumans' living expenses and any medical bills incurred in the future.

As to the merits of the request, there was unanimous opposition by members of the surrounding community. Specifically, the Board heard from representatives of the Ralston Community Association as well as the Pikesville Community Growth Corporation. In addition to these representatives, residents of the subject street also testified in opposition. Generally, their opposition fell within several categories; specifically, a concern about the possible exacerbation of current drainage and flooding conditions in the area, a concern about the increased demands of further development on an already strained parking situation, and a fear that this, and other development within the community, would overcrowd the land and cause aesthetic harm.

As is clear from the record, the reasons offered in both support of and opposition to the petitions are identical to those arguments and testimony offered before this Board in 1987. The Petitioner admits as much but argues that a significant change has occurred within the community, specifically, the development of plans by Baltimore County for improvements to correct the storm water runoff deficiency in the area. Through the Petitioner's expert witness, Mr. Paul Lee, it is clear that these plans have been formulated, in fact, a work order has been signed. However, it is also evident that no physical construction has taken place within the community.

In turning to the issues before us, the Board must first consider whether the doctrine of res judicata prohibits the Board's consideration of this

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case. As has been stated by the appellate courts of this State, the principles of res judicata are applied sparingly to administrative decisions. These courts have established a policy that, absent a strong showing to the contrary, administrative bodies should permit the litigation and resolution of issues before them on their merits. Notwithstanding this presumption, res judicata must be applied in some instances. Noted the Court of Special Appeals in Board of County Commissioners of Cecil County, et al. v. Elwood Racine, 24 Md. App. 435 (1975):

"We recognize, as indeed we must, that an unreversed final decision by a zoning board, passed in the exercise of its discretion upon issues of fact or upon mixed issues of law and fact are fully binding upon the parties to the cause and their privies as to all issues determined thereby. It is only when there has been a substantial change of conditions or it is shown that the decision was the product of fraud, surprise, mistake, or inadvertence, that such an administrative body may reverse its prior decision in litigation between the same parties." (p. 450)

Thus, the issue before us is whether the adoption of a plan for relief of the storm water runoff problem in this community, absent any physical implementation of that plan, constitutes a substantial change in conditions. In our view, it does not. We believe that there must be some significant and recognizable change in the community in order to prohibit the application of res judicata. For that reason, the Board will deny the Petition for Variances in that there has been no evidence of fraud, surprise, mistake or inadvertence which would necessitate a reversal of the Board's prior Order.

Notwithstanding our decision based on this principle, an additional consideration of those sections of the B.C.Z.R. governing the requested variances is in order. Specifically, Counsel for the Petitioner and the Office of the People's Counsel debated the interpretation and effect of Section 304 of the

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B.C.Z.R. as applied to this site. Section 304 of the B.C.Z.R. provides:

"A one-family dwelling may be erected on a lot having an area or width at the building line less than that required by the height and area regulations, provided:

"a. That such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to adoption of these Regulations; and

"b. That all other requirements of the height and area regulations are complied (sic) with; and

"c. That the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements."

Thus, there are three conditions which, if all are satisfied, permit the owner of an undersized lot to improve that lot with a one-family dwelling. As to condition (a), that the lot is within a duly recorded subdivision prior to the adoption of these regulations, it is stipulated by the parties in this case that this condition is satisfied. Specifically, that subdivision known as Ralston was platted and recorded in 1897.

Resolution of the other conditions, contained within paragraphs (b) and (c), is more difficult. As to paragraph (b), it provides that a one-family dwelling unit may be erected provided "that all other requirements of the height and area regulations are complied (sic) with." People's Counsel identifies these "other requirements" as contained within Section 1802.3.c.1 of the B.C.Z.R. which governs setbacks. In opposition to this viewpoint, Counsel for Petitioner argues that paragraph (b) is in conflict with the introductory paragraph of Section 304 wherein area and width requirements are described. A plain reading of the statute is significant. Paragraph (b) specifically designates "other requirements of the height and area regulations." (emphasis added) The use of the word "other" may not be ignored, and we therefore hold that, unless the property owner can comply with these "other requirements" (i.e., setback footages) of the B.C.Z.R., he may not exercise the

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privilege to develop conferred by Section 304. Further, compliance as envisioned under paragraph (b) could not be realized by the obtaining of a variance as to the setback requirements. Clearly, a variance confers validity on a plan which does not comply with the regulations. Therefore, in our view, the mere petitioning for a variance from a setback requirement renders the relief provided in Section 304 unavailable.

As to paragraph (c), the Board has been asked to interpret that language within the context of this case. To paraphrase that paragraph requires that, in order to develop, the owner of the undeveloped lot not own adjacent land enabling him to conform substantially to the width and area requirements. In the present case, the Petitioners own the adjoining land. However, the adjoining property is improved by a dwelling in which the Shumans presently reside. Therefore, in order to preserve the integrity of the developed lot, the Shumans cannot "borrow" a portion of the improved lot to conform substantially to the width and area requirements necessary to improve the presently undeveloped lot. Thus, mere ownership of an adjoining lot does not prohibit the property owner from developing the undeveloped adjacent lot under Section 304(c), particularly when the improved lot in and of itself lacks sufficient acreage to comply with width and area requirements.

Applying these principles to the case at hand, we would further hold that the Petitioner cannot construct his proposed dwelling on lot #212, under the purview of Section 304, because of his inability to comply with the requirements of paragraph (b). However, if no variances were requested from setback regulations, construction would be allowed as a matter of right.

Lastly, some discussion of the merits of the variances is in order. As is well settled and stated in McLean v. Solely, 270 Md. 208 (1973), the Petitioner must prove practical difficulty or undue hardship. As was held in

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our earlier decision, we see none here. Expectation of a financial gain is insufficient to meet that standard. Likewise, we are not persuaded that the property owners' health justifies the construction of a new dwelling.

The Board will therefore deny the petitions and will so order.

ORDER

It is therefore this 14th day of July, 1989 by the County Board of Appeals of Baltimore County ORDERED that the Petitioners' request for variances in Case No. 89-85-A be and the same are hereby DENIED.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman

John G. Disney

Harry E. Buchmeister, Jr.

PETITION FOR ZONING VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 304.4 and 1802.3.c.1 to allow lot widths of 40 feet for lots 212 and 213 in lieu of required 55 feet; to allow a setback of 6 feet in lieu of required 10 feet for lot #212; to permit lot area of 4760 sq. feet for each lot (#212 & #213) in lieu of 6000 sq. feet each; and to allow building on an area lot of 4760 sq. feet in lieu of 6000 sq. feet each.

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The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 304.4 and 1802.3.c.1 to allow lot widths of 40 feet for lots 212 and 213 in lieu of required 55 feet; to allow a setback of 6 feet in lieu of required 10 feet for lot #212; to permit lot area of 4760 sq. feet for each lot (#212 & #213) in lieu of 6000 sq. feet each; and to allow building on an area lot of 4760 sq. feet in lieu of 6000 sq. feet each.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 304.4 and 1802.3.c.1 to allow lot widths of 40 feet for lots 212 and 213 in lieu of required 55 feet; to allow a setback

Section 304 -- USE OF UNDERSIZED SINGLE-FAMILY LOTS (B.C.Z.R. 1955)

A one-family dwelling may be erected on a lot having an area or width at the building line less than that required by the height and area regulations, provided:

- That such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to adoption of these Regulations; and
- That all other requirements of the height and area regulations are complied with; and
- That the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements.

This section specifically requires that all current area standards be adhered to when possible i.e. the right to build on an undersized lot exists only in instances where the owner does not own sufficient adjoining lots to comply with width and area requirements.

It should be noted at this point that the 1945 BCZR properly assumed that many of the undersized lots would not be buildable unless more than one lot was owned. The 1955 regulations, however, went a step further obviously intending to restrict development of even larger undersized lots. In addition to the current setback requirements, property owners who owned more than one undersized lot, must now combine said lots so as to comply substantially (to the extent possible) with all current height and area regulations.

Both the 1945 and 1955 edition of the BCZR clearly attempts to control or prohibit development of undersized lots while being fair to those who invested or purchased such lots particularly at a time when they were considered buildable by the then controlling regulations.

In the instant case, the owner of two 40 foot wide adjoining lots constructed a dwelling with a two foot side yard setback (on the side property line that does not adjoin the second lot). The two foot setback became non-conforming in 1945 when Section X required a five foot side yard setback. By the same token, the dwelling would have become non-conforming as to lot area and lot width via the March 30, 1955 addition of the Zoning Regulations except for the special regulation governing undersized lots i.e. Section 304. This section as stated above provides and/or requires that adjoining land owned by the same person be used to comply with height and area requirements. Since the owner of the dwelling has owned the two lots all along, the lots cannot be considered a legal non-conforming use if the second lot is utilized for the purpose of constructing another dwelling. In such an instance, both lots are in violation of Section 102.2:

--No yard space or minimum area required for a building or use shall be considered as any part of the yard space or minimum area for another building or use.

The Zoning Commissioners have interpreted the undersized lot regulations consistently over the years based upon the clear spirit and intent of said regulations as described above; i.e., prohibit development of undersized lots except in those instances where the owner does not own sufficient adjacent land to conform substantially with current regulations and to grant variances only in instances where hardship and practical difficulty exist and said granting will not be detrimental as to the health, safety, and general welfare of the neighborhood.

The property in question is zoned D.R.5.5 and requires a lot width of 55 feet and area of 6,000 sq. ft. and sideyard setbacks of 10 ft. on each side. Both lots actually contain only 4,760 square feet each and are 40 feet wide with a rectangular depth of 119 feet. Both lots were recorded separately but in the same Deed, one of the two lots is presently improved with a dwelling believed to have been originally constructed in 1930. The subdivision was recorded November 18, 1897.

In instances of existing nonconforming uses, the Zoning Commissioner's have consistently required that nonconforming improvements be brought into compliance before any expansion takes place. In this case, the developer cannot build on the vacant lot that he owns until the current area requirements for the existing dwelling have been complied with.

The developer/owner did correctly attempt to comply by requesting variances. In fact, he requested variances four times (two before the Zoning Commissioner and two before the Board of Appeals - each time he was denied).

He now presents the argument that even though the last Opinion of the Board of Appeals denied his request for a variance, the opinion states that the adjoining lot is buildable, because a house exists on the other lot, and therefore, he has nothing to add to the vacant lot.

The Board's opinion that proceeds the actual order denying the variance, clearly indicates that the variance must be denied on the basis of not having met the burden of proof required. Other verbiage in the opinion is however totally inconsistent with the above referred to Zoning Regulations and history of application by the Zoning Commissioner and other Courts (See Mardo Homes Inc., et al v. Baltimore County, MD unreported in the Court of Special Appeals of Maryland, September Term, 1977).

The issue as appealed to the Board of Appeals dealt with variances to area requirements setbacks. The issue as to the intent and or applicability of Section 304 is a separate issue that can be considered and disposed of by the Board of Appeals only upon appeal from a decision of the Zoning Commissioner. Any such Order by the Zoning Commissioner would include useful data based upon many years experience and application of undersized lot requirements. I feel that such information is paramount in considering and rendering decisions by the Board of Appeals and other Courts in matters such as this. I do not believe the Board of Appeals ordered the issuance of this permit, but only opined that the lot may be buildable.

After considering your request to issue a permit for a new dwelling on your client's second lot (Lot 212), I have for the above reasons decided that I cannot approve your request in the absence of a public hearing.

Very truly yours,

J. Robert Haines
J. Robert Haines
Zoning Commissioner

JRH:cer

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



111 West Chesapeake Avenue
Towson, MD 21204

887-3353

April 5, 1991

S. Eric DiNenna, Esquire
DiNenna, Mann and Breschi
Suite 600, 409 Washington Avenue
Towson, Maryland 21204

RE: Lot No. 212- Harry Shuman
Case No. 89-85-A

Dear Mr. DiNenna:

Concerning your inquiry regarding the above captioned matter, I have had an opportunity to review the law you cited and find it inapposite to your argument. The "Law of the Case" doctrine springs from the mandate of an appellate decision, not from dicta. Administrative Orders, such as those issued by the Zoning Commissioner and the Board of Appeals, routinely have the mandate or rule of law clearly segregated from the rationale (i.e. dicta) of the opinion; such is the case here. Inasmuch as the Board of Appeals' opinion clearly denied the requested variance relief, I find your argument unpersuasive. Your argument clearly roots itself in the dicta of the Board's opinion, fundamentally not within the scope of the "Law of the Case" doctrine.

The Board's ruling on the requested variance relief from Section 304 of the B.C.Z.R. is free from ambiguity - the requested variances were denied and the parties were advised of their right to appeal.

Again, as I indicated to you in my letter of October 2, 1990, copy of which is attached hereto for your ready reference, I cannot approve your request for a permit in the absence of a new public hearing or a specific order by the Board of Appeals directing the issuance of said permit.

I have reviewed several times my position on this matter and there is no legally compelling reason to reverse my position. I will not issue the requested permit.

Very truly yours,

J. Robert Haines
J. Robert Haines
Zoning Commissioner

JRH:mmm

encl.

cc: Merreen Kelly, Administrative Officer
James McKinney, Executive Asst.
James E. Dyer, Zoning Supervisor
Carl Richards, Zoning Coordinator

Ch. 20

APPEALS § 543

§ 542. Construction and Effect of Mandate in General

The mandate of the Court of Appeals should be construed and given effect in accordance with the import of the language used.

Where the mandate of an appellate court is ambiguous or uncertain, the lower court may apply the usual rules of interpretation in its construction and may examine the opinion rendered on appeal to ascertain the true intention and purpose of the mandate.¹⁴

The mandate of our Court of Appeals should be construed according to the import of the language used.¹⁵ The words used by the Court of Appeals in giving directions to the lower court by remanding a case for further proceedings should be construed and given effect according to their natural and ordinary meaning.¹⁶

§ 543. — Law of Case; Binding Effect

The mandate, decision, or determination rendered on appeal to the Court of Appeals is the law of the case, and is binding on the lower court, in further or subsequent proceedings in the case in the lower court, where the facts and evidence in the subsequent proceedings are substantially the same as those on the original trial.

Provided the facts and evidence in the subsequent proceedings are substantially the same as those on the original trial, the

between same parties growing out of same facts, where Court of Appeals, affirmed without remand, a judgment for defendant entered after adversary trial and overruled motion for reargument based on alleged perjury of defendant's witness, trial court was without jurisdiction, therefore, to strike the judgment on plaintiff's motion based on same facts—West-A-Car Co. v. Globe & Rutgers Fire Ins. Co., 123 A. 230, 106 Md. 447.

11. C.J.S. Appeal and Error § 1903, Appeal and Error § 1193.

12. Pasarew Const. Co. v. Tower Apartments, 1903, 118 A.2d 678, 208

13. United Trust Co. of Maryland v. Harrison's Nurseries, 1943, 20 A.2d 625, 133 Md. 231.

413

614 Md.

13 ATLANTIC REPORTER, 28 SERIES

CHAYT v. Bd. of Zoning Appeals of Baltimore City

No. 52

Court of Appeals of Maryland.

May 23, 1990.

1. Appeal and error § 1195(1)

A decision of the Court of Appeals, once pronounced, is binding on the court below, and cannot be disregarded or be called into question, or be examined afterwards in the same case, save it is the "law of the case" binding and conclusive on the parties.

Const. art. 4, § 15.

See Woods and Persons, Permanent Edition, for all other citations of "Law of the Case".

2. Appeal and error § 14(2)

If the lower court's order departs from the mandate of the Court of Appeals, either by allowing more or less than contained in the mandate's terms, it is illegal and subject to review by the Court of Appeals.

Const. art. 4, § 15.

3. Appeal and error § 1198

Final court's order would be reversed for failure to comply with mandate of Court of Appeals, where order merely restrained the use of the property pursuant to the permit granted in accordance with the order of the Board of Zoning Appeals for construction of stable on part of realty only, when Court of Appeals in reversing order affirming order of Board of Zoning Appeals had remanded case "for passage of an order restraining the use as proposed, because not permitted" under city's zoning ordinance, since the lower court's order limited the injunction to permit to question instead of enjoining the use of other parts of the property for a stable. Const. art. 4, § 15.

Appeal from Baltimore City Court; J. Craig McLanahan, Judge.

Suit by Leon Chayt and Rose Chayt, his wife, against the Board of Zoning Appeals of Baltimore City, etc., and others, for an injunction restraining the erection of certain buildings, on the ground that such buildings would be a nonconforming use not permitted by zoning ordinance. From an order of the Baltimore City Court affirming the action of the Board of Zoning

Appeals permitting the erection of the buildings, Leon Chayt and Rose Chayt, his wife, appealed to the Court of Appeals. The Court of Appeals, 9 A.2d 749, reversed the order and remanded the case for passage of an order in accordance with opinion. From the order of the Baltimore City Court, Leon Chayt and Rose Chayt, his wife, appeal.

Order reversed, and case remanded for issuance of injunction in conformity with opinion.

Argued before OFFUTT, PARKE, SLOAN, MITCHELL, SHEHAN, JOHN-SON, and DELAPLAIN, JJ.

Edward H. Burke and William Hoffen-berg, both of Baltimore (Bowie & Burke, of Baltimore, on the brief), for appellants.

William H. Marshall, Asst. City Sol., of Baltimore (Charles C. G. Evans, City Sol., of Baltimore, on the brief), for appellee Board of Zoning Appeals.

William A. Grimes, of Baltimore (Ritchie, Janney, Ober & Williams, of Baltimore, on the brief), for appellee Fraine Brothers.

SHEHAN, Judge.

This is an appeal from an order of the Baltimore City Court, and raises the question whether this order conforms to, and carries out, the terms of a mandate of the Court of Appeals in the case wherein Leon Chayt, and his wife, had brought suit for the purpose of restraining the Maryland Jockey Club and Fraine Brothers from erecting on certain lots of ground owned by the Jockey Club a stable of frame construction. In the case wherein this mandate was passed, being No. 27 at the October Term, 1939, it appears that the appellants were the owners and occupants of a dwelling house to the North of the Pimlico Race Track in Baltimore City. Fraine Brothers had contracted with the Jockey Club to erect a stable on its lands which lay outside of the northwest corner of its track enclosure at the rear of appellants' dwelling house. The appellants then filed a petition in the Baltimore City Court appealing from the action of the Zoning Board in granting a permit to erect this stable, and praying an injunction to prohibit the building of this structure. The Baltimore City Court affirmed the order of the Board and dismissed the petition. Thereupon an appeal was taken and in a decision rendered December 13,

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DiNENNA and BRESCHI
ATTORNEYS AT LAW

S. ERIC DINENNA, P.A.
GEORGE A. BRESCHI, P.A.

FRANCIS X. NORGEEDING, JR. I
2 ALSO MEMBER OF STAFF OF
COLUMBIA LAW

SUITE 600
MERCANTILE-TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(301) 296-6820
TELEFAX (301) 296-6884

April 2, 1991

The Honorable J. Robert Haines
Zoning Commissioner for Baltimore County
County Office Building
Towson, Maryland 21204

RE: Shuman Property/Hawthorne
Avenue

Dear Mr. Haines:

Pursuant to your conversation with me, would you be so kind as to advise me of your decision concerning our conversation as to the ability of Mr. Harry Shuman, owner of the property, to develop in a single family dwelling.

We have had several conferences and inquiries concerning this and as of this date, I have not received an answer from you.

I appreciate your cooperation.

Very truly yours,

S. Eric DiNenna
S. ERIC DINENNA

SED:cjc
cc: Mr. Jerry Shuman

RECEIVED
APR 3 1991

ZONING OFFICE

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



111 West Chesapeake Avenue
Towson, MD 21204

887-3353

April 2, 1991

S. Eric DiNenna, Esquire
DiNenna, Mann and Breschi
Suite 600, 409 Washington Avenue
Towson, Maryland 21204

RE: Lot No. 212- Harry Shuman
Case No. 89-85-A

Dear Mr. DiNenna:

Concerning your inquiry regarding the above captioned matter, I have had an opportunity to review the law you cited and find it inapposite to your argument. The "Law of the Case" doctrine springs from the mandate of an appellate decision, not from dicta. Administrative Orders, such as those issued by the Zoning Commissioner and the Board of Appeals, routinely have the mandate or rule of law clearly segregated from the rationale (i.e. dicta) of the opinion; such is the case here. Inasmuch as the Board of Appeals opinion clearly denied the requested variance relief, I find your argument unpersuasive. Your argument clearly roots itself in the dicta of the Board's opinion, fundamentally not within the scope of the "Law of the Case" doctrine.

The Board's ruling on the requested variance relief from Section 304 of the B.C.Z.R. is free from ambiguity -- the requested variances were denied and the parties were advised of their right to appeal.

Again, as I indicated to you in my letter of October 2, 1990, copy of which is attached hereto for your ready reference, I cannot approve your request for a permit in the absence of a new public hearing or a specific order by the Board of Appeals directing the issuance of said permit.

Very truly yours,

J. Robert Haines
Zoning Commissioner

JRH:mmm

cc: James McKinney, Executive Asst.

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

April 23, 1991

Lucy M. Mason
14 Clarendon Avenue
Baltimore, Md. 21208

Dear Ms. Mason:

I have been asked to answer the concerns you expressed to the County Executive, March 14, 1991, regarding 11 Hawthorne Avenue.

This property was the subject of a hearing before the Deputy Zoning Commissioner, Case No. 89-85-A, and the variance petition was denied on November 30, 1988. The Shuman's appealed the decision to the County Board of Appeals which upheld the denial in a decision, dated July 14, 1989.

Recently, they attempted to obtain a building permit which was also denied by this office (see attached).

I hope this information will alleviate any concerns you may have. Thank you for your interest in this matter. If you wish to have further information, please call me at 887-8128.

Very truly yours,

Kurt A. Kugelberg
Senior Planner
Regulations and Policies

KAK:jet
cc: Louis Waidner, Executive Assistant
Kathy Suter, Administrative Assistant
File

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
1111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 857-3180
June 14, 1991

RECEIVED

JUN 17 1991

ZONING OFFICE

Re: Case No. 89-85-A
Harry Shuman, et ux
Lots 212 and 213
Deed Ref. Liber 7055, Folio 100
13 Hawthorne Avenue
3rd Election District

Dear Mr. Dyer:

In response to Mr. Shuman's letter to the Board of Appeals dated May 13, 1991, the Board has carefully reviewed the Opinion and Order issued the 14th day of July, 1989, in Case No. 89-85-A. The wording in that opinion is "[h]owever, if no variances were requested from setback requirements, construction would be allowed as a matter of right."

The Board of Appeals is very much aware of your position concerning the issuance of a building permit for a second dwelling on the above-referenced property. Specifically, you feel that the only issue before the Zoning Commissioner and the Board was that of variance to the setback requirements of the Baltimore County Zoning Regulations (BCZR). I also understand that you take issue with the Board's position that Section 364 of the BCZR only applies to adjoining lots/ownership in instances where both lots are unimproved.

With all due respect to your position, the Board has carefully considered the Opinion as written and feels that, in the context of the instant Order and in accordance with Section 500.7 of the BCZR, if a building permit is applied for without any side yard setback variances the permit must be issued. Only and purely in this case wherein no side yard setback variances are requested shall the building permit be issued.

Very truly yours,

William T. Hackett
Chairman
County Board of Appeals

cc: Jerome Shuman, P.E.

PANEL BP1018H
TIME: 16:39:04 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 04/01/91
DATE: 04/01/91 APPROVALS DETAIL SCREEN ZDC 16:31:03

PERMIT #	AGENCY	DATE	CODE	COMMENTS
B086823				
BLD PLAN	04/02/91	01	JFP	
SEDI CTL	04/08/91	01	TR/TT	
ZONING	04/01/91	20	DENIED PER CASE # 89-85-A SE LTR 5-5-91	
PUB SERV	04/03/91	18	WDD/ FIELD INSPECTION	
ENVRMNT	04/03/91	01	MC	
PLANNING	04/02/91	21	RT/REQD.TAX ACCT.NO.FOR 40X119 LOT	
PERMITS				

01 THRU 09 INDICATES AN "APPROVAL" ** 10 THRU 99 INDICATES A "DISAPPROVAL"

ENTER - NEXT APPROVAL PF4 - ISSUE PERMIT

CLEAR - MENU

PANEL BP1003H
TIME: 16:17:24 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 04/01/91
DATE: 04/01/91 GENERAL PERMIT APPLICATION DATA PLK 16:14:38

PERMIT #	AGENCY	DATE	CODE	COMMENTS
B086823				
RECEIPT #	A116362			
CONTROL #	NR			
XREF #	B086823			
FEE:	126.00			
PAID:	126.00			
PAID BY:	APP			
DATES				
APPLIED:	04/01/91			
ISSUED:				
OCCPNY:				
INSPECTOR:	VR			
NOTES:	RAC			

PROPERTY ADDRESS
11 HAWTHORNE AVE
SUBDIV: RALSTON
TAX ACCOUNT #: 0323050150 DISTRICT/PRECINCT 03 02
NAME: SHUMAN, HARRY
ADDR: 13 HAWTHORNE AVE BALTO, MD 21208
APPLICANT INFORMATION
NAME: JEROME SHUMAN
COMPANY:
ADDR1: 17 BRANCHWOOD COURT
ADDR2: Pikesville, MD 21208
PHONE #: 484-7506 LICENSE #:
PASSWORD

ENTER - PERMIT DETAIL PF3 - INSPECTIONS PF7 - DELETE PF9 - SAVE
PF2 - APPROVALS PF4 - ISSUE PERMIT PF8 - NEXT PERMIT PF10 - INQRY
TIME: 16:17:45 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 04/01/91
DATE: 04/01/91 BUILDING DETAIL 1 PLK 16:16:12

PERMIT #	AGENCY	DATE	CODE	COMMENTS
B086823				
FOUNDATION BASE	2			
CONSTRUC FUEL SEWAGE WATER	1E			
CENTRAL AIR				
ESTIMATED COST	50,000			
OWNERSHIP:	1			
RESIDENTIAL CAT:	1			
\$EFF:	\$1BED:	\$2BED:	\$3BED:	TOT BED:
1 FAMILY BEDROOMS:	2			

WORK: CONST SFD NO FIREPLACE, 2 BEDROOMS.
20 X 54.6 X 32 = 3270SF. EX SFD ON LOT 213
PROPOSED SFD ON LOT 212. OK TO FILE PER
DOUG SWAN. WRONG LOT SIZE. NOT A VACANT LOT

PROPOSED USE: SFD
EXISTING USE: SFD TO REMAIN
RESIDENTIAL CAT: 1
\$EFF: \$1BED: \$2BED: \$3BED: TOT BED: TOT APTS:
1 FAMILY BEDROOMS: 2

ENTER - NEXT DETAIL PF2 - APPROVALS PF7 - PREV. SCREEN PF9 - SAVE
PF1 - GENERAL PERMIT PF3 - INSPECTIONS PF8 - NEXT SCREEN CLEAR - MENU
TIME: 16:18:03 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 04/01/91
DATE: 04/01/91 BUILDING DETAIL 2 PLK 16:16:12

PERMIT #	AGENCY	DATE	CODE	COMMENTS
B086823				
GARBAGE DISP:				
POWDER ROOMS:	1			
BATHROOMS:	1			
KITCHENS:	1			
LOT NOS:	212, 213			
CORNER LOT:				
BLOCK:	3270			
SECTION:	01			
LIBER:	01			
FOLIO:	275			
MAP:	04			

PLANNING INFORMATION
STR PLAN AREA: SUBSEWER: CRIT AREA: PASSWORD:

ENTER - NEXT DETAIL PF2 - APPROVALS PF7 - PREV. SCREEN PF9 - SAVE
PF1 - GENERAL PERMIT PF3 - INSPECTIONS PF8 - NEXT SCREEN CLEAR - MENU
TIME: 16:18:20 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 04/01/91
DATE: 04/01/91 APPROVALS DETAIL SCREEN PLK 16:16:19

PERMIT #	AGENCY	DATE	CODE	COMMENTS
B086823				
BLD PLAN	04/01/91	20	UNDER REVIEW BY JRH/MUST CLEAR WITH HIM/CAM	
SEDI CTL				
ZONING				
PUB SERV				
ENVRMNT				
PLANNING				
PERMITS				

01 THRU 09 INDICATES AN "APPROVAL" ** 10 THRU 99 INDICATES A "DISAPPROVAL"

ENTER - NEXT APPROVAL PF4 - ISSUE PERMIT

CLEAR - MENU

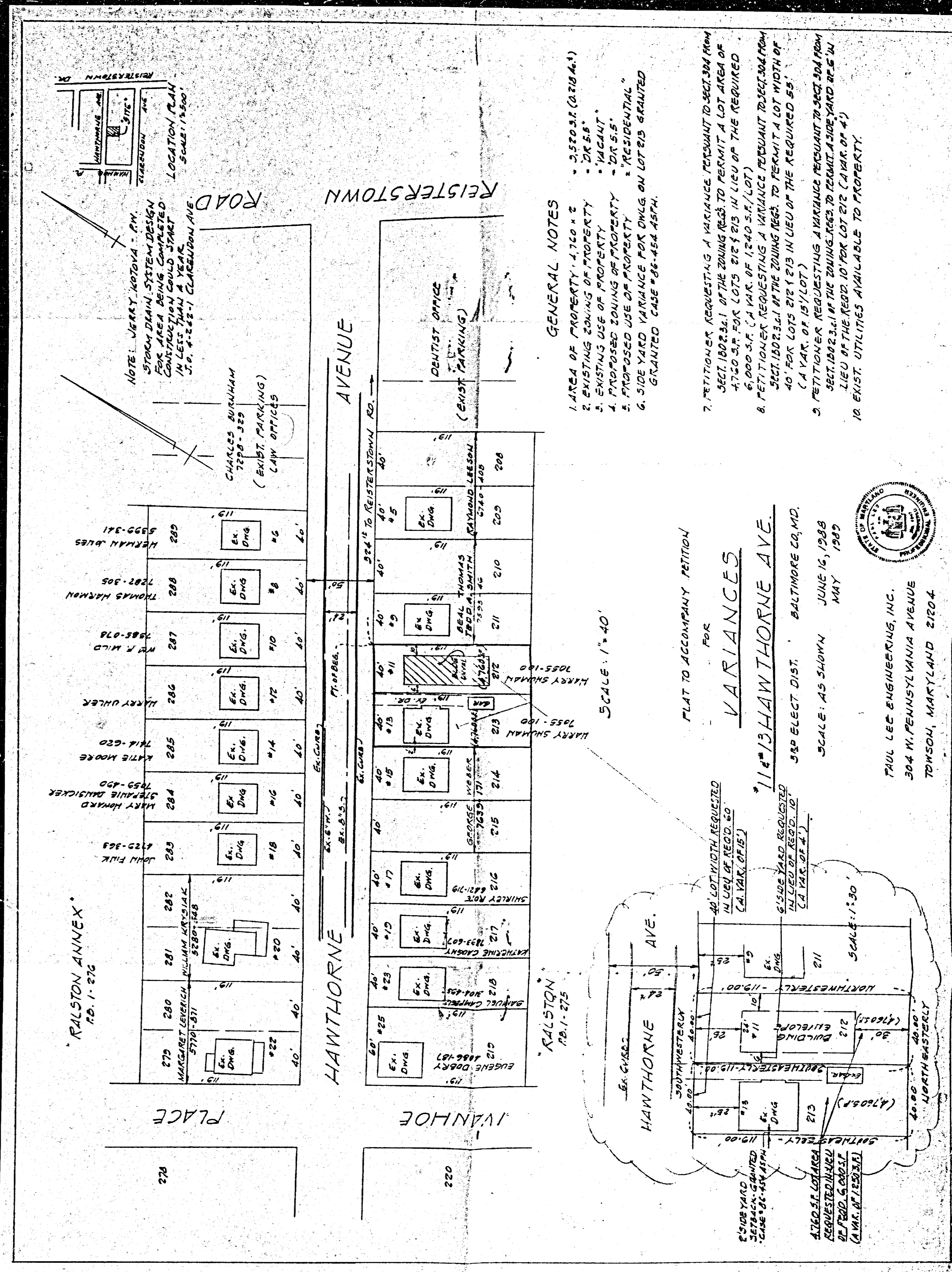
*** RECORD HAS BEEN UPDATED ***
TIME: 16:19:06 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 04/01/91
DATE: 04/01/91 APPROVALS DETAIL SCREEN ZDI 16:19:06

PERMIT #	AGENCY	DATE	CODE	COMMENTS
B086823				
BLD PLAN	04/01/91	20	UNDER REVIEW BY JRH/MUST CLEAR WITH HIM/CAM	
SEDI CTL				
ZONING				
PUB SERV				
ENVRMNT				
PLANNING				
PERMITS				

01 THRU 09 INDICATES AN "APPROVAL" ** 10 THRU 99 INDICATES A "DISAPPROVAL"

ENTER - NEXT APPROVAL PF4 - ISSUE PERMIT

CLEAR - MENU



IN RE: PETITION FOR ZONING VARIANCE
SE/S Hawthorne Avenue, 324'
SW of Reisterstown Road
(11 and 13 Hawthorne Avenue)
3rd Election District
2nd Councilmanic District
Harry Shuman, et ux
Petitioners

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 89-85-A
Petitioners

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request variances to permit lot widths of 40 feet for lots 212 and 213 in lieu of the required 55 feet; a side yard setback of 6 feet in lieu of the required 10 feet for lot 212; and a lot area of 4,769 sq.ft. for both lots, in lieu of the 6,000 sq.ft. required, all as more particularly described in Petitioner's Exhibit 1.

The Petitioners, by Jerome & Marion Shuman, their son and daughter-in-law, appeared, testified and were represented by S. Eric DiNenna, Esquire. Also appearing on behalf of the Petition was Paul Lee, Engineer. The following residents appeared as Protestants: John N. Fink, Herman E. Jones, Jessie H. Mann, Melinda A. Hipsley, and Sheldon Shugerman.

Testimony indicated that the subject property, known as 11 and 13 Hawthorne Avenue, is zoned R.M. 5.5 and consists of two 40-foot wide lots which were purchased by Petitioners in 1985. Although both lots were combined in one deed, they are described as two separate and distinct properties. Lot 13 is improved with an existing dwelling, which is approximately 50 to 60 years of age. Lot 11 is currently vacant.

The subject matter of this Petition was previously addressed in cases heard by the Deputy Zoning Commissioner and the Board of Appeals in 1986, in Re: Petition for Zoning Variances and Special Hearing, Harry Shuman, Case No. 86-254-ASPH. At that time, Petitioners' request was

denied by both the Deputy Zoning Commissioner on May 16, 1986, and upon appeal, by the County Board of Appeals on February 26, 1987. Petitioner contended that circumstances had changed since then in that the flooding and drainage problems experienced in the past were going to be corrected. To support this claim, Mr. Shuman introduced as Petitioner's Exhibit 4 an article taken from an Owings Mills Times newspaper issued some time in September 1988 entitled "State to stem floods with completed storm drains." Testimony was presented as to the hardship the Petitioners would suffer if the variances were not granted and their need to build a more modern house which can meet their health needs. Mr. Shuman testified regarding Petitioners' need for more adequate filtration and air conditioning systems which are presently inadequate in the dwelling on Lot 13. Mr. Shuman emphasized the desire of his parents to continue living in this area due to it being in the vicinity of their son and daughter-in-law. He further contended that to convert the existing dwelling to meet the Petitioners' needs would be cost prohibitive.

Testimony in opposition to the granting of the variances indicated that the neighborhood, because of the 40-foot lot development, is already crowded and has significant storm water runoff problems existing throughout the neighborhood. Protestants contend that any further development would increase these problems. Further, they believe that the granting of the instant variance would result in the development of other lots in the vicinity which would then further exasperate the situation.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

After due consideration of the testimony and evidence presented, there is insufficient evidence to allow a finding that the Petitioners would experience practical difficulty or unreasonable hardship if the requested variance were denied. Petitioners contend the denial of the variance will unreasonably prevent the use of the property. Assuming for purposes of argument this is true, under McLean v. Soley, Petitioners must prove the relief if granted will not adversely affect the public safety and general welfare. The Petitioners have failed to show that the granting of the variance would not adversely affect the health, safety and general welfare of the community. Therefore, the variances requested must be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be denied.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 30th day of November, 1988 that the Petition for Zoning Variance to permit lot widths of 40 feet for lots 212 and 213 in lieu of the required 55 feet; a side yard setback of 6 feet in lieu of the

required 10 feet for lot 212; and a lot area of 4,769 sq.ft. for both lots, in lieu of the 6,000 sq.ft. required, all as more particularly described in Petitioner's Exhibit 1, to and in favor of the Petitioners.

[Signature]
S. Eric DiNenna
Deputy Zoning Commissioner
Baltimore County

AMN:bjs

ORDERED FOR FILING
12/2/88
By *[Signature]*

ORDERED FOR FILING
12/2/88
By *[Signature]*

ORDERED FOR FILING
12/2/88
By *[Signature]*

ORDERED FOR FILING
12/2/88
By *[Signature]*

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Townson, Maryland 21204
XXX-XXXX 687-3353
J. Robert Holmes
Deputy Zoning Commissioner

November 30, 1988

S. Eric DiNenna, Esquire
Mercantile-Townson Building, Suite 600
409 Washington Avenue
Townson, Maryland 21204

RE: PETITION FOR ZONING VARIANCE
SE/S Hawthorne Avenue, 324' SW of Reisterstown Road
(11 and 13 Hawthorne Avenue)
3rd Election District - 2nd Councilmanic District
Harry Shuman, et ux - Petitioners
Case No. 89-85-A

Dear Mr. DiNenna:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Zoning Variance has been denied in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Rasmussen at 494-3331.

Very truly yours,

[Signature]
ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

cc: Mr. John N. Fink
18 Hawthorne Avenue
Baltimore, Md. 21208
Mr. Herman E. Jones
6 Hawthorne Avenue
Baltimore, Md. 21208
People's Counsel
File

Mr. Jessie Mann
18 Clarendon Avenue
Baltimore, Md. 21208
Ms. Melinda A. Hipsley
104 Sherwood Avenue
Baltimore, Md. 21208
Mr. Sheldon Shugerman
302 Purvis Place
Baltimore, Md. 21208

Paul Lee P.E.

#481

Paul Lee Engineering Inc.
368 W. Pennsylvania Ave.
Townson, Maryland 21204
301-821-5344

DESCRIPTION
11 AND 13 HAWTHORNE AVENUE
THIRD ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

Beginning for the same at a point located on the south side of Hawthorne Avenue, said point being located 324' ± southwesterly from the west side of Reisterstown Road, thence binding along the south side of Hawthorne Avenue

- (1) Southwesterly 80 feet, thence leaving said south side of Hawthorne Avenue,
 - (2) Southeasterly 119 feet, thence
 - (3) Northeasterly 80 feet and
 - (4) Northwesterly 119 feet to the point of beginning.
- Containing 9,520 square feet (0.218 acre ±) of land, more or less.

Being known as Lots 212 and 213 as shown on the plat of "Ralston" recorded among the Land Records of Baltimore County in plat book 1-275.



Engineers - Surveyors - Site Planners

RE: PETITION FOR VARIANCES
SE/S Hawthorne Ave., 324' SW
Reisterstown Rd. (11 & 13
Hawthorne Ave.), 3rd District
HARRY SHUMAN, et ux, Petitioner : Case No. 89-85-A

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

[Signature]
Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Room 304, County Office Building
Townson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 14th day of September, 1988, a copy of the foregoing Entry of Appearance was mailed to S. Eric DiNenna, Esquire, 409 Washington Ave., Townson, MD 21204, Attorney for Petitioners.

[Signature]
Peter Max Zimmerman

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Townson, Maryland

89-85-A

District: 3rd
Posted for: Variance
Petitioner: Harry Shuman, et ux
Location of property: SE/S Hawthorne Ave., 324' SW of Reisterstown Road
(11 and 13 Hawthorne Ave.)
Location of Signs: Signs in front of lot 212, signs in front of lot 213
Remarks:
Posted by: *[Signature]*
Number of Signs: 2
Date of return: September 23, 1988

NORTHWEST STAR GLA
YOUR MARKET PLACE FOR NORTHWEST GOODS

PERSONAL SERVICE
"Baltimore's Best"
PILLOW CLEANING
Free pick-up
Same day service
Standard rate
Special rates
Leather & Men's Tailoring
Ladies' & Men's Tailoring
LEWIS CLEANERS
2141 Liberty Road
922-0010 • 922-0764
12147 Park Heights Ave. 356-3828

HELP WANTED
BOOKKEEPER ASSISTANT - F/T, Mon-Fri, light typing, check book, sales, call 857-0000
DRIVER/REPAIR - Part time, to deliver meals and help in kitchen. Must be able to lift 50 lbs. and have own car. Call 521-5404
GOVERNMENT JOBS - \$16,000-\$20,000/yr. New York, New York. 11 hrs/week. Bedford Cleaners, 105-106 Federal St.
PT DRIVER - for light deliveries, 4 days/week. Bedford Cleaners, 105-106 Federal St.
DOMESTIC HELP - wanted for housekeeping, laundry, clean

INSTRUCTION
MUSIC LESSONS - Piano, flute & saxophone. Creative program in your home or mine. Children, adults. Weekdays, weekends. Rita Plattner, 494-1825
SPANISH, FRENCH, GERMAN, ITALIAN, Etc. by native teachers. 4 to 8 p.m. Academy of Languages, 2027 Maryland Ave. 685-8385
PIANO TEACHER - Beginner thru advanced. Specialty: children. Realistic Conservatory instruction. Realistic. 704-7085 or 684-1947
MATH TUTORING - Algebra, Geometry, Trigonometry, Calculus, 619 SAT, GRE, Real Estate math. Mrs. Shuman, 494-4000

LEGAL NOTICE
NOTICE OF HEARING
The Zoning Commission of Baltimore County is hereby giving notice and holding a public hearing on the application for a Special Zoning Variance to the following property: SE/S Hawthorne Ave., 324' SW of Reisterstown Road (11 and 13 Hawthorne Ave.)
The hearing will be held on the 23rd day of September, 1988, at 7:00 p.m. in the County Office Building, Room 304, 12147 Park Heights Ave., Townson, Maryland 21204.
In the event that the Petition is granted, a Special Zoning Variance will be issued for the property described above, subject to the conditions and restrictions set forth in the Petition and the Zoning Ordinance of Baltimore County, and the Petitioner shall be bound by the terms of the Special Zoning Variance.
A Petitioner may appeal the decision of the Zoning Commission to the County Board of Appeals within thirty (30) days of the date of this Order.
For further information on filing an appeal, please contact Ms. Charlotte Rasmussen at 494-3331.

LEGAL NOTICE
NOTICE IS HEREBY GIVEN that the following property is being offered for sale by the County of Baltimore, Maryland: 11 and 13 Hawthorne Ave., Baltimore, Maryland. The property is being offered for sale by the County of Baltimore, Maryland, and the sale will be held on the 23rd day of September, 1988, at 7:00 p.m. in the County Office Building, Room 304, 12147 Park Heights Ave., Townson, Maryland 21204.
A Petitioner may appeal the decision of the Zoning Commission to the County Board of Appeals within thirty (30) days of the date of this Order.
For further information on filing an appeal, please contact Ms. Charlotte Rasmussen at 494-3331.

MOVER
F/T & P/T Positions
Applications being accepted for local Owings Mills moving company. Applicants must be hard working, highly motivated, courteous, and most importantly, reliable. Experience is preferred, and overtime compensation is a must. Starting pay \$5.50/hr.
356-9515
Please leave a message

Manager

Cost of Advertisement

**"DUPLICATE"
CERTIFICATE OF PUBLICATION**

TOWSON, MD. 21204, 1988

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., once in each of successive weeks, the first publication appearing on 12/15/88, 1988.

THE JEFFERSONIAN,

Publisher

\$41.35
200 CUBA
REC'D 1/13/89

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

Date: 1/14/89

Mr. & Mrs. Harry Shuman
13 Hawthorne Avenue
Pikesville, Maryland 21208

Re: Petition for Zoning Variance
CASE NUMBER 89-85-A
SE/S Hawthorne Avenue, 324' SW Reisterstown Road
(11 and 13 Hawthorne Avenue)
3rd Election District - 2nd Councilmanic District
Petitioner(s) Harry Shuman, et ux
HEARING SCHEDULED: TUESDAY, OCTOBER 4, 1988 at 2:00 p.m.

Dear Mr. Shuman:

Please be advised that \$78.65 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself.

THIS FEE MUST BE PAID AND THE ZONING SIGN(S) AND POST(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and bring it along with the sign(s) and post(s) to the Zoning Office, County Office Building, Room 111, Towson, Maryland 21204 fifteen (15) minutes before the hearing is scheduled to begin.

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE, REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE 1/14/89 ACCOUNT 1111111111
RECEIVED FROM 1111111111
FOR 1111111111
VALIDATION OR SIGNATURE OF CASHIER

**CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland**

District 3rd Date of Posting 1-15-89
Posted for: Harry Shuman, et ux
Petitioner: Harry Shuman, et ux
Location of property: SE/S Hawthorne Avenue, 324' SW Reisterstown Road
Location of Sign: SE/S Hawthorne Avenue, 324' SW Reisterstown Road
Remarks: Sign posted 1/15/89 (sign was removed)
Posted by: J. Robert Haines
Number of Signs: 1

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

J. Robert Haines
Zoning Commissioner

August 16, 1988

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Zoning Variance
CASE NUMBER: 89-85-A
SE/S Hawthorne Avenue, 324' SW Reisterstown Road
(11 and 13 Hawthorne Avenue)
3rd Election District - 2nd Councilmanic District
Petitioner(s) Harry Shuman, et ux
HEARING SCHEDULED: TUESDAY, OCTOBER 4, 1988 at 2:00 p.m.

Variance to allow widths of 40 feet for lots #212 and #213 in lieu of the required 55 feet; to allow a setback of 5 feet in lieu of the required 10 feet for lot #212; to permit a lot area of 4,760 sq. ft. for each lot (#212 and #213) in lieu of 6,000 sq. feet each.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES
Zoning Commissioner of
Baltimore County

cc: Harry Shuman, et ux
S. Eric DiNenna, Esq.
File

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

January 24, 1989

Baltimore County Board of Appeals
County Office Building, Room 315
Towson, Maryland 21204

RE: Petition for Zoning Variance
SE/S Hawthorne Avenue, 324' SW of Reisterstown Road
(11 and 13 Hawthorne Avenue)
3rd Election District, 2nd Councilmanic District
Harry Shuman, et ux - Petitioner
Case No. 89-85-A

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on December 29, 1988 by S. Eric DiNenna, Attorney on behalf of the Petitioner. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

J. ROBERT HAINES
Zoning Commissioner

JRH:cor

Enclosures

cc: Mr. & Mrs. Harry Shuman, 13 Hawthorne Avenue
Baltimore, Md. 21208

Jerome & Marian Shuman, 17 Branchwood Court, Baltimore, Md. 21208

S. Eric DiNenna, Esquire, DiNenna, Mann & Breschi
409 Washington Avenue, Suite 600, Towson, Md. 21204

Appeal
Case No. 89-85-A
January 24, 1989
Page 2

Paul Lee, 304 W. Pennsylvania Avenue, Towson, Md. 21204
John N. Fink, 18 Hawthorne Avenue, Baltimore, Md. 21208
Herman E. Jones, 6 Hawthorne Avenue, Baltimore, Md. 21208
Jessie H. Hahn, 6 Clarendon Avenue, Baltimore, Md. 21208
Melinda A. Hipsley, 104 Sherwood Avenue, Baltimore, Md. 21208
Sheldon Shugartman, 202 Purvis Place, Baltimore, Md. 21208
People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204
File

IN RE: PETITION FOR ZONING VARIANCE * BEFORE THE
SE/S Hawthorne Avenue, 324' * COUNTY BOARD OF
SW of Reisterstown Road *
(11 and 13 Hawthorne Avenue) *
3rd Election District * APPEALS FOR
2nd Councilmanic District * BALTIMORE COUNTY
Harry Shuman, et ux * Case No. 89-85-A
Petitioners *

ORDER OF APPEAL

MR. COMMISSIONER:

Please enter an Appeal from the decision of the Deputy Zoning Commissioner dated November 30, 1988, to the County Board of Appeals on behalf of the property owner, Harry Shuman, et ux.

S. ERIC DINENNA
DINENNA, MANN & BRESCHI
409 Washington Avenue,
Suite 600
Towson, Maryland 21204
(301) 296-6820

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 29th day of December, 1988, a copy of the foregoing Order of Appeal was mailed, postage prepaid, to People's Counsel for Baltimore County, Courthouse, Towson, Maryland 21204.

S. ERIC DINENNA

DINENNA,
MANN & BRESCHI
ATTORNEYS AT LAW
SUITE 600
COURTHOUSE TOWSON BLDG
109 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(301) 296-6820



County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 296-3180 EST-3180
March 22, 1989

HEARING ROOM -
Room 301, County Office Building

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 89-85-A

HARRY SHUMAN, ET UX

SE/S Hawthorne Ave., 324' SW of Reisterstown Road (11 and 13 Hawthorne Avenue)

3rd Election District
2nd Councilmanic District

VAR -To allow lot widths of 40 ft. in lieu of required 55 ft.; to allow setback of 5 ft. in lieu of required 10 ft.; to permit lot area of 4,760 sq. ft. for each lot in lieu of the required 6,000 sq. ft. each

11/30/88 -D.Z.C.'s Order DENYING Petition for Variance

ASSIGNED FOR:

FRIDAY, JUNE 30, 1989 at 10:00 a.m.

cc: Mr. and Mrs. Harry Shuman Appellants/Petitioners
S. Eric DiNenna, Esquire Counsel for Appellants/Petitioners
Beal Thomas
Mrs. Leonard Mason
Jessie H. Hahn
Herman E. Jones
John N. Fink
Paul Lee

Jerome and Marian Shuman
Melinda A. Hipsley
Sheldon Shugartman
People's Counsel of Baltimore County
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Docket Clerk -Zoning
Arnold Jasion, County Attorney Office of Law
LindaLee M. Fuszmaul
Legal Secretary

less than the average depth of the front yards of all lots within 100 feet on each side thereof which are improved as described above. [B.C.Z.R., 1955.]

Section 304--USE OF UNDERSIZED SINGLE-FAMILY LOTS [B.C.Z.R., 1955.]

A one-family dwelling may be erected on a lot having an area or width at the building line less than that required by the height and area regulations, provided: [B.C.Z.R., 1955.]

- That such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to adoption of these Regulations; and [B.C.Z.R., 1955.]
- That all other requirements of the height and area regulations are complied with; and [B.C.Z.R., 1955.]
- That the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements. [B.C.Z.R., 1955.]

Section 305--REPLACEMENT OF DESTROYED OR DAMAGED DWELLINGS [B.C.Z.R., 1955.]

In case of complete or partial casualty loss by fire, wind, storm, flood, or otherwise of an existing dwelling that does not comply with height and/or area requirements of the zone in which it is located, such dwelling may be replaced before the casualty are height deficiencies of the dwellings. [B.C.Z.R., 1955.]

Section 306--MINOR PUBLIC UTILITY STRUCTURES [B.C.Z.R., 1955.]

Minimum lot area regulations in any zone shall not apply to repeater, booster, or transformer stations, or small community dial offices. [B.C.Z.R., 1955; Resolution, November 21, 1956.]

Section 307--VARIANCES [B.C.Z.R., 1955; Bill No. 107, 1963.]

The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from offstreet parking regulations and from sign regulations, only in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential

		PETITIONER(S) SIGN-IN SHEET	
		NAME	ADDRESS
		Raul L. Lopez	304 W. Hanna Ave.
		Luis M.	119 E. ...
		Maria S.	...

18 Hawthorne Avenue
Baltimore, Maryland 21204
May 6, 1986

Judge Arnold Jablon
Zoning Commissioner, Baltimore County
Towson, Maryland 21204

Dear Judge Jablon:

In reference to zoning hearing for the lot under #12 in the unit block of Hawthorne Avenue, Baltimore, Maryland 21204, please be advised that a dwelling with a floor dimension of 24 feet by 36 feet is acceptable on said lot.

Our main concern is that construction of a here and the desired driveway for care residence will cause severe and additional flooding problems at the rear of the above lot.

After a heavy or prolonged rain, the rear property line of this lot establishes a line with water flowing over to the lot adjacent to this property. New construction will only increase the existing problem and will only cause additional water buildup to the already existing properties.

Thanking you for taking this problem into consideration in your zoning decision.

Very truly yours,
John A. Pink
John A. Pink
Guy D. Pink
Guy D. Pink

Deborah A. Mason - Lums
Katie M. Lums
Katie M. Lums

PETITION
EXHIBIT 6

Dear Sirs:

We are against the zoning appeal located on Hawthorne Avenue. If an exception is allowed for building to take place on lots fifty feet in width or less, it is setting a precedent for all lots in the neighborhood to have similar zoning appeals. There are approximately 48 lots that do not have buildings on them. If building is to take place on any of the lots within the Raleston community, it will add to an already congested traffic problem and further stress parking in the neighborhood.

Building within the Raleston community would only increase the damaging flooding problem. It would decrease water absorption and increase runoff from roofs and driveways.

In conclusion, we feel that allowing these lots to become new individual residences would further worsen existing problems. To allow these lots to be rezoned for residential or personal gain would seriously harm the Raleston community.

We are against this zoning appeal.

Thank you,
Richard Spivey Sachs
12 Clarendon Ave.
Pikesville, Maryland 21076

PROTESTANT
EXHIBIT 2

PROTESTANT
EXHIBIT 2

6 Clarendon Avenue
Pikesville, Maryland 21076
October 4, 1988

County Board of Appeals of Baltimore County
Towson, Maryland 21204

Gentlemen:

Our main concern is the storm water situation, which is inadequately controlled as of now and would only become worse with additional construction which would reduce ground absorption.

It is our contention that an adequate and satisfactory storm water control system must be not only be promised but implemented and proven before another construction be authorized or allowed in the vicinity.

Even with the small amount of rain that we have had in the last week or so, inspection will show the existing conditions and would be aggravated more with said construction.

I would hope this situation will be taken adequately into account and that the rezoning request be denied.

Sincerely,
Jessie Mann
Jessie Mann

PROTESTANT
EXHIBIT 2

14 Clarendon Avenue
Pikesville, Maryland 21076
October 4, 1988

County Board of Appeals of Baltimore County
Towson, Maryland 21204

Gentlemen:

I am the property owner directly across the street from Hawthorne Avenue and I am not in support of the rezoning of any kind on said lot.

Flooding is the biggest problem that I and other property owners have in common with the adjacent property owners. With additional construction, it would reduce ground absorption. Lot #12 is a large lot and it is not fair that lots #11 and #13 and a small portion of the lot on Hawthorne Avenue to my property be rezoned when the lot on the other side of the street would be rezoned with any construction on the lot to my property.

There are approximately 48 lots in the Raleston community that are not built upon. We have a large lot on the east side of the street and if these said lots of 40 feet wide and 110 feet deep were granted the variance and rezoned, it would be a severe overdevelopment.

I do hope that our community needs and desires will be given due consideration. I request that you deny the variance request.

Lucy Mason

PROTESTANT
EXHIBIT 3

105 Hawthorne Ave.
Pikesville, Md. 21076
October 3, 1988

Commissioner of Zoning & Regulation
Baltimore County Md.
Towson, Md. 21204

PROTESTANT
EXHIBIT 4

Dear Commissioner or whom it may concern,

Due to my work schedule, I am unable to personally attend the hearing on the zoning variance for lots #12 + #13 of the Raleston Community in Pikesville. I hope this letter will be acceptable as my means of protest against the proposed zoning variance.

I find the present owner's (of lots #12 + #13) request to build on the undersized lot irresponsible to the adjacent property owners and our community. Further, the owners want to place the structure closer to the adjacent property owners lines, and are requesting that your office/you make the exception. This variance would place a burden on many. I certainly would not like to have someone else's home/structure crowded over into "my face".

There are approximately 48 existing lots just like #12 which have 40' fronts and no structures. What do you say to these other 48 lot owners. (I own lots #222 + 221).

Baltimore County set the standards for "buildable" lots in its jurisdiction for very good reasons. I hope you will continue to maintain these standards and vote against these proposed variances and preserve our community and neighborhood. To waive the existing (county) regulations for placement of a structure closer to the property lines of others than is presently acceptable by your standards, is also unacceptable by my standards.

Again, I reiterate my stand against the said variance and proposal on the grounds that it is and should remain an undersized, unbuildable lot, as set forth by your standards; and to preserve the aesthetic tranquility of our community and my neighbors.

Sincerely,
Claire C. McCarthy
(CLAIRE C. MCCARTHY)

I am very concerned
the adjoining neighbor at
Hawthorne Ave. and am writing
to advise that I have no
objection to Mr. Shuman building
on lot #12. The development
lot for residential use would
improve the residential character
to keep the residential character.
Sincerely,
George E. Weber
George E. Weber
15 Hawthorne Ave.

PETITIONER
EXHIBIT 5

RECEIVED ZONING OFFICE
DATE: 10/3/88
(hand delivered)

Beal Thomas and
Tedd A. Smith
9 Hawthorne Avenue
Pikesville, MD 21076
(301) 484-0484
30 September 1988

Mr. J. Robert Haines
Zoning Commissioner
Baltimore County Office of Planning and Zoning
111 West Chesapeake Avenue
Towson, MD 21204

RE: Petition for Zoning Variance
Case No. 89-05-A
Hearing - October 4, 1988, 2 p.m.

Dear Mr. Haines:

When we purchased 9 Hawthorne Avenue last summer, we were given copies of the ruling by the Deputy Zoning Commissioner, dated 16 May 1986, and that of the County Board of Appeals of Baltimore County, dated 26 February 1987. It was our understanding that these rulings were the final word in the matter and that there would not be a dwelling built on lot #212, which is adjacent to our property.

Needless to say, we are opposed to the building of a dwelling on what is now open space. We are concerned about the problem of density--the neighborhood already being overcrowded.

We regret our inability to be present at the hearing, due to business commitments, but wish you to please take this letter, the two previous rulings on the matter, and the wishes of the majority of the community, as the strongest possible objection to altering the present zoning codes.

Sincerely,
Beal Thomas
Beal Thomas
Tedd A. Smith
Tedd A. Smith

PROTESTANT
EXHIBIT 5

JANE R. WEBER
107 CIBOLA AVE
BALTIMORE, MD 21204
(301) 542-2173

Commissioner of Zoning & Regulation
Baltimore County Maryland
Towson, MD 21204

Dear Sirs,

As a resident of the Palston Community in Pikesville for about 17 years now, I would like to make out against the proposed zoning variance requested for Hawthorne Avenue. My work schedule doesn't allow for me to be in attendance today, so I hope that this letter will be acceptable as a means of protest against the proposed variance for lots #12 and #13.

The request by the owners of lots #12 and #13 to build on the undersized lot is in poor taste when you consider the needs and rights of the adjacent property owners and to the Palston community in general. Already there are uneasy and hard feelings between the property owners of Clarendon Avenue because the single driveway at 211 Clarendon Avenue crosses the house situated at 209 Clarendon Avenue and so do the car doors when parked in the driveway at 211 Clarendon Avenue.

The owners of lots #12 and #13 that are in question today want your office to make an exception to the already stated law that restricts other property owners in the same situation in this same community. Come to you and ask that you lend the same rules so that they can build still more structures than an already established neighborhood. There are approximately 48 lot owners who could decide to do just that.

The owners of lots #12 and #13 are requesting that you, and your staff, so that their proposed structure be closer to the adjacent property owners lines. Baltimore County can not standards for such a lot. For very good reasons. These standards are meant to be followed, not altered. Therefore, I would like to go on record in my objection against these proposed variances and one who are voting for the preservation of our community and the neighborhood.

Sincerely,
Jane R. Weber
Jane R. Weber

PROTESTANT
EXHIBIT 6

Reopening Petition
To whom it may concern
**PROTESTA
EXHIBIT**
To reopen the lot for building
purpose would be folly. We in this
area have a tremendous drainage
problem and any new construction would
only compound the problem. I know
by my own experience. I live at 6 Hawthorne
Ave. I had no drainage problem until the modern
place on the East side and the County
constructed their parking lot on the North
side.

Also to zone this lot for
construction opens the door for better
parties to try and obtain permits to do
otherwise. Likewise, Right now there
are over 60 such parcels in this area.
Just recently the Ralston Community
Association turned down several requests for
reopening the lot to the impact that might
setback is stated above.
I feel we are saturated with
enough construction without adding more.

Herman E. Jones

I have known Mr. Shuman off
and on for years. Some of the people here
have known him longer.
He has gained the reputation as
a wholesaler. His father's buying
property from people, fixing them and selling
on them a while and then selling them.
To place to mention Clarendon Ave and Talbot
Rd.

Mr. Shuman told me that when
he first mentioned this lot that he
would like to build on this lot claiming
he would live there and would either
rent or sell the one where he now lives.

Herman E. Jones



3655-A
Old Court Road
Suite 15
Pikesville, MD 21208

Telephone
(301) 484-2310

October 6, 1988

Ms. Ann Nastarowicz
Deputy Zoning Commissioner
111 W. Chesapeake Avenue
Towson, MD 21204

Dear Ms. Nastarowicz:

The Pikesville Community Growth Corporation represents
14 communities, the Pikesville Chamber of Commerce and the
Pikesville Senior Center. Our purpose is to revitalize the
business district thereby strengthening our surrounding
communities.

We voted in December, 1986 to fully support the Ralston
Community position to oppose the requested variance
concerning the property at 11 and 13 Hawthorne Avenue, issue
89-85-A - #481. We reaffirmed this position at our Executive
Committee meeting on September 28, 1988, and by another
unanimous vote at our regular Board of Directors meeting on
October 5, 1988.

Ralston is a densely populated community. Hawthorne
Avenue consists mainly of homes built on double lots and
because of the character of the neighborhood is deeply
concerned with maintaining as much green, open space as
possible. In addition, there are storm water problems which
the residents feel could be exacerbated by more construction
in the area.

We are concerned with the Planning departments
recommendations of approval because it could be
counterproductive to the current zoning regulations.

In 1986, the Deputy Zoning Commission and the Board of
Appeals denied this request. We believe there is no new
evidence to contradict these decisions. We are fearful that
should this variance be granted, an unhealthy precedent would
be established and the character of this residential area
could be jeopardized.

Ms. Nastarowicz

Page 2

October 6, 1988

I believe Mr. Sheldon Shugarman, who is officer of the
Ralston Community and a member of the PCGC Board of Directors
relayed our position to you. This letter further confirms
the unanimous decision of the Pikesville Community Growth
Corporation to request that you deny the request for this
variance.

Sincerely,

Evelyn Burns
Executive Director

EB/ff
cc: Sheldon Shugarman
Disk II Nastarowicz

APPEAL

Petition for Zoning Variance
SE/S Hawthorne Avenue, 1/4" SW of Reisterstown Road
(11 and 13 Hawthorne Avenue)
3rd Election District - 2nd Councilmanic District
HARRY SHUMAN, ET UX - Petitioners
Case No. 89-85-A

Petition for Zoning Variance

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Director of Planning & Zoning Comments

Petitioner's Exhibits: 1. Plat to accompany Petition

2. Copy of Deed

3. (No document in file marked as such)

4. Article concerning flooding problem

5. Letter of support from neighbor

6. Copy of letter from John & Lucy Fink

Protestant's Exhibits: 1, 2, 3, 4, 5, 6, & 7 - Letters of opposition

Deputy Zoning Commissioner's Order dated November 30, 1988 (denied)

Notice of Appeal received December 29, 1988, from S. Eric DiNenna,
Attorney on behalf of the Petitioner

cc: Mr. & Mrs. Harry Shuman, 13 Hawthorne Avenue
Baltimore, Md. 21208

Jerome & Marian Shuman, 17 Branchwood Court, Baltimore, Md. 21208

S. Eric DiNenna, Esquire, DiNenna, Mann & Breschi
409 Washington Avenue, Suite 600, Towson, Md. 21204

Paul Lee, 304 W. Pennsylvania Avenue, Towson, Md. 21204

John N. Fink, 18 Hawthorne Avenue, Baltimore, Md. 21208

Herman E. Jones, 6 Hawthorne Avenue, Baltimore, Md. 21208

Jessie H. Hahn, 6 Clarendon Avenue, Baltimore, Md. 21208

Melinda A. Hipsley, 104 Sherwood Avenue, Baltimore, Md. 21208

Sheldon Shugarman, 202 Purvis Place, Baltimore, Md. 21208

People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204

Request Notification: P. David Fields, Director of Planning & Zoning
Patrick Keller, Office of Planning & Zoning
J. Robert Haines, Zoning Commissioner
Ann H. Nastarowicz, Deputy Zoning Commissioner
James E. Dyer, Zoning Supervisor
Docket Clerk

Appeal Checklist
Case No. 89-85-A
January 24, 1989
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DINENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DINENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.
GERALDINE A. KRALNER

SUITE 600
MERCANTILE TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(301) 296-6820

October 18, 1988

RECEIVED ZONING OFFICE
DATE: 10/15/88

RE: Harry Shuman, et ux
Case No. 89-85-A

Dear Commissioner Nastarowicz:

Pursuant to our hearing before you dated Tuesday, October 4, 1988,
at 2:00 p.m., I would like to make the following comments.

As I indicated to you at the time of the hearing, I had yet to
receive, at the hearing, the comments of the Office of Planning
concerning this Petition.

This is to advise you that upon returning to my office from your
hearing, in my mail, received October 4, 1988, the date of the hearing,
in light of the comments of the Planning Office, I only give you this
myself.

With reference to your request for some research relative to my
argument, I offer you the following cases as to reasonable use of a
property.

I would like to cite you the case of City of Baltimore v. Schu,
204 Md. 523, 105(A) 2nd 482 (1954), wherein the Court said:

"To sustain an attack upon the validity
of the ordinance, an agreed property
owner must show that if the ordinance
is enforced, the consequent
restrictions upon his property preclude
its use for any purpose to which it is
reasonably adapted, either because the
ordinance does not authorize a
variation of the general rule, which
would admit of such use, or because
such variation has been refused by the
Administrative Board in the exercise of
a discretion, which the ordinance
confers upon it." (Page 530-31)

In essence to this case, states that if there is no authority for
a variance to be granted, it would be a failure on behalf of the
government to allow a reasonable use of the property. In the case of
Bac, we do have the right to a variance as proven through testimony.

A further review of Section 304 of the Baltimore County Zoning
Regulations, and the Section to which your Honor stated that the client
had sufficient adjoining land, in my opinion, was misinterpreted by the
Commissioner. Section 304 deals with a dwelling being erected on a
lot. The lot in question in this case is Lot No. 212. Subsection C of
Section 304 says "that the owner of the lot does not own sufficient
adjoining land to conform substantially to the width and area
requirements."

When Subsection C refers to the word "lot", it is the lot upon
which a dwelling is to be erected. The lot in question, Lot 212, has a
width of 40 feet. The owner of that lot, your petitioner, owns a lot
adjoining but on that adjoining lot, Lot 213, is an existing dwelling
that was erected legally in the past. If Mr. and Mrs. Shuman were add
to Lot 212, an additional 15 feet from Lot 213, it in essence makes Lot
213 illegal.

The thrust of this argument is we do not judge sufficient land
adjoining from a lot that has a dwelling, but from the lot that is
wished to be developed upon. The ideal situation would be that if both
lots 212 and 213 were undeveloped, then in that case, I could
reasonably foresee that lack of a variance being granted because that
would be a sufficiently wide lot to house one dwelling. But in this
case, in as much as there is in fact a dwelling on Lot 213, Lot 212
does not have sufficient land adjoining to make a legal lot.

Accordingly and for these reasons, in my opinion, we were able to
prove a practical hardship and unreasonable difficulty and that there
would be no detrimental effect upon the community with the construction
of this one dwelling.

Accordingly, I respectfully request that the variances requested
be granted.

If you have any questions as to this opinion and explanation,
please contact me.

Very truly yours,

S. ERIC DINENNA

SED:cjc
cc: Mr. Paul Lee
Mr. Harry Shuman

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

January 24, 1989

Baltimore County Board of Appeals
County Office Building, Room 315
Towson, Maryland 21204

RE: Petition for Zoning Variance
SE/S Hawthorne Avenue, 324' SW of Reisterstown Road
(11 and 13 Hawthorne Avenue)
3rd Election District, 2nd Councilmanic District
Harry Shuman, et ux - Petitioner
Case No. 89-85-A

Dear Board:

Please be advised that an appeal of the above-referenced case was
filed in this office on December 29, 1988 by S. Eric DiNenna,
Attorney on behalf of the Petitioner. All materials relative to the
case are being forwarded herewith.

Please notify all parties to the case of the date and time of the
appeal hearing when it has been scheduled. If you have any questions
concerning this matter, please do not hesitate to contact this office.

Very truly yours,

J. ROBERT HAINES
Zoning Commissioner

JRH:cer

Enclosures

cc: Mr. & Mrs. Harry Shuman, 13 Hawthorne Avenue
Baltimore, Md. 21208

Jerome & Marian Shuman, 17 Branchwood Court, Baltimore, Md. 21208

S. Eric DiNenna, Esquire, DiNenna, Mann & Breschi
409 Washington Avenue, Suite 600, Towson, Md. 21204

Paul Lee, 304 W. Pennsylvania Avenue, Towson, Md. 21204

John N. Fink, 18 Hawthorne Avenue, Baltimore, Md. 21208

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Sheldon Shugarman, 202 Purvis Place, Baltimore, Md. 21208

People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204

File

Plat

+ of +

RALSTON

Scale 100 feet per inch *Thos. H. Disney*
Survey Nov. 1897

Filed November 18th 1897

Test: *Lewis M. Bacon*
Clerk

X X X X X X X

AVENUE

HAWTHORNE

PURVIS PLACE

IVANHOE PLACE

CLARENDON

AVENUE

BRIGHTSIDE

AVENUE

ROAD

TURNPIKE

REISTERSTOWN

ROAD

Plat
No 3

Plat

+ of +

RALSTON ANNEX

SCALE OF FEET
THOS. H. DISNEY SUR. MARCH 1898

WALDRON

AVENUE

PURVIS PLACE

IVANHOE PLACE

SHERWOOD

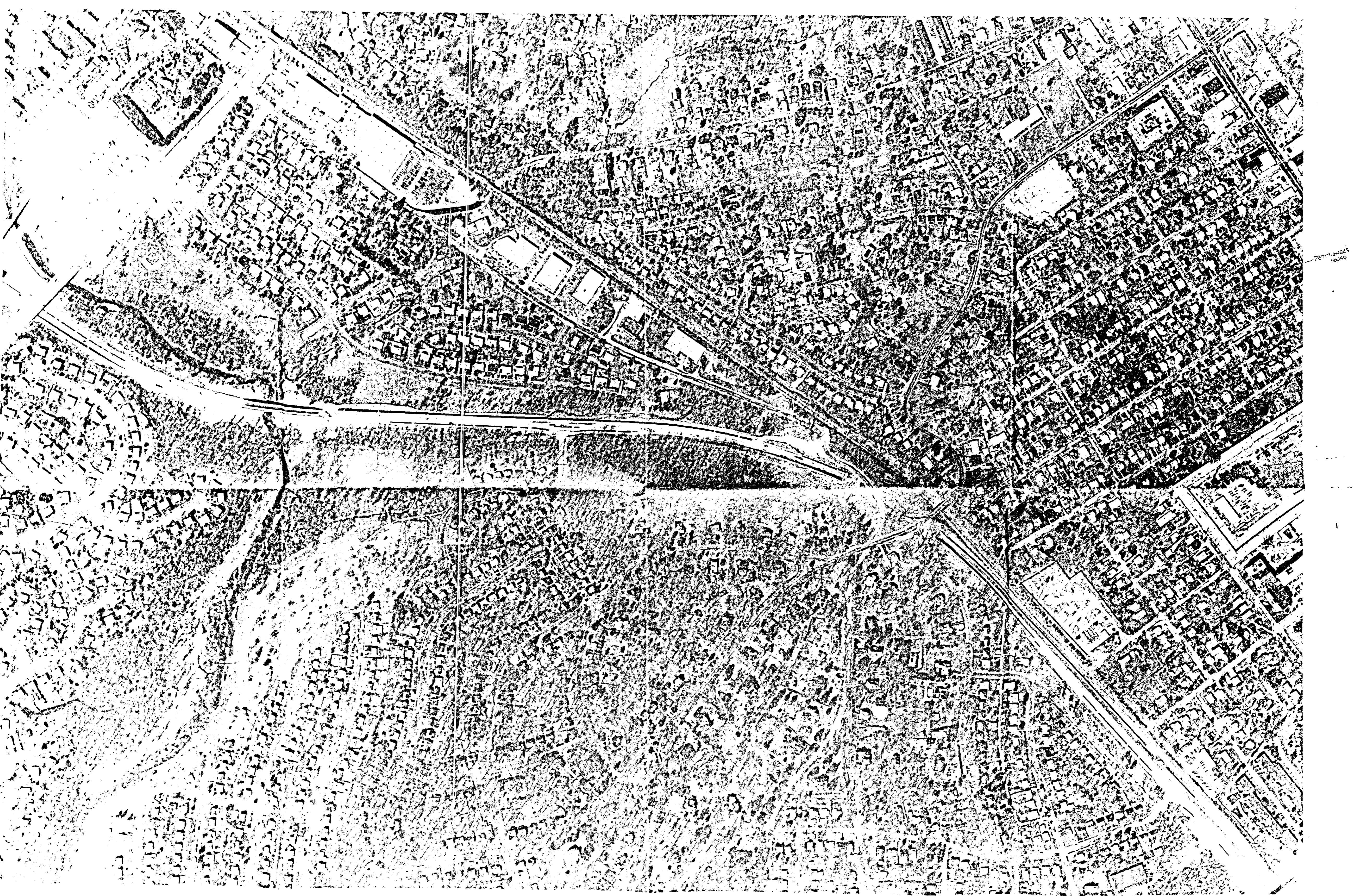
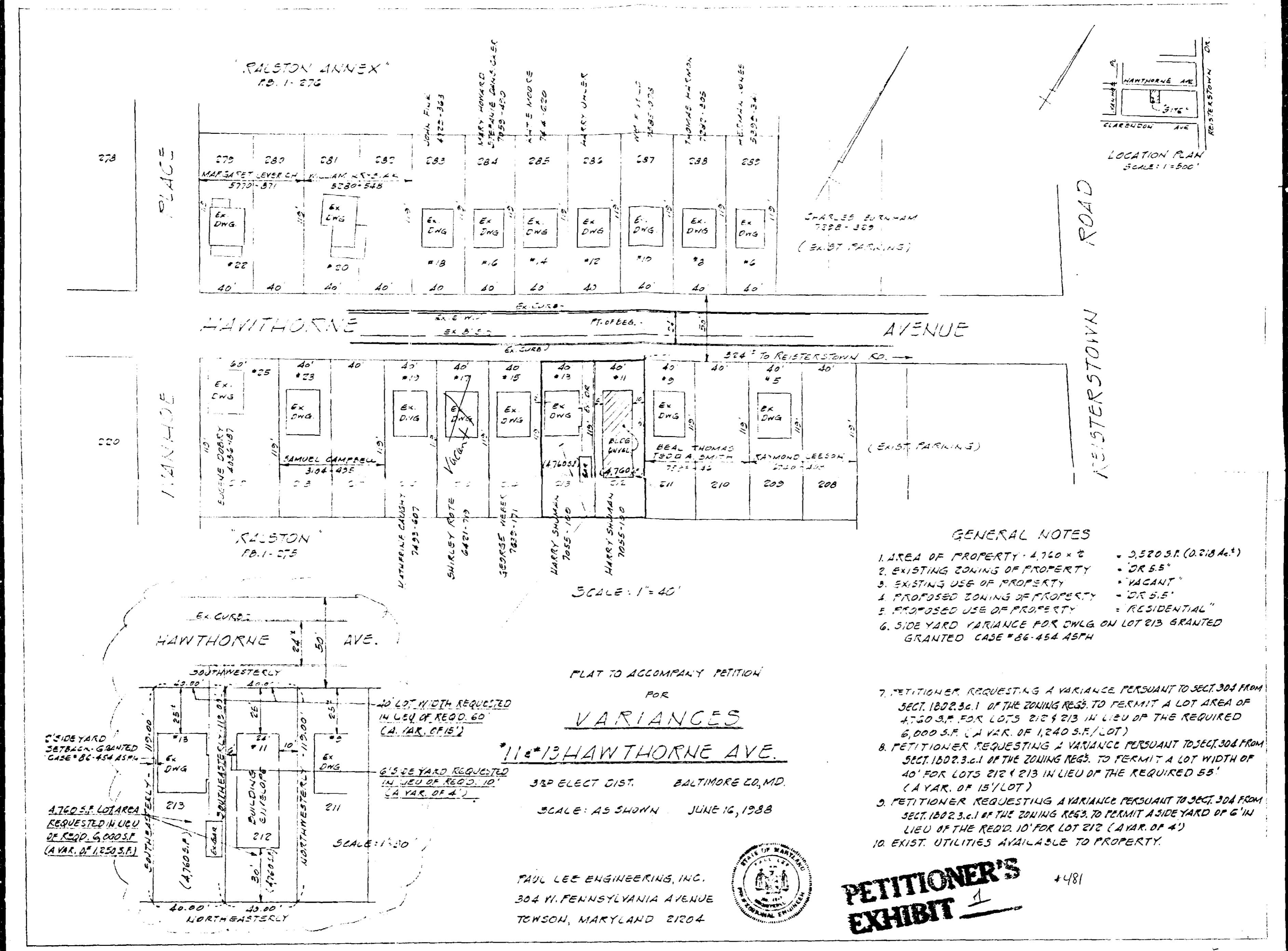
AVENUE

HAWTHORNE

AVENUE

J.W.S. N^o1 PART 2-276

Plat No 4



TO: Mr. Jim Dyer
Office of Zoning
Date: August 2, 1990

FROM: John R. Reisinger
Permits and Licenses

Subject: 11 Hawthorne Avenue

I am attaching a copy of the above mentioned permit application and site plan. My understanding is that approval to file was denied by Zoning. Please verify if this is correct, and if so, state the reason for the denial.

JRR/nmg
attachment

APPLICATION FOR PERMIT
BALTIMORE COUNTY, MARYLAND
OFFICE OF THE BUILDING ENGINEER
TOWSON, MARYLAND 21204

CEA: JHB

PERMIT #13
RECEIPT #14
CONTROL #15
XREF #16

PROPERTY ADDRESS: 11 Hawthorne Ave.
SUBDIV: 11 Hawthorne Ave.
TAX ACCOUNT #: 03-23-050150 pt
OWNER'S INFORMATION (LAST, FIRST): SHUMAN, HARRY
NAME: SHUMAN, HARRY
ADDRESS: 11 Hawthorne Ave.

APPLICANT INFORMATION
NAME: HARRY SHUMAN
COMPANY: SHUMAN, HARRY
ADDRESS: 11 Hawthorne Ave., Towson, MD 21204
PHONE: 781-2300
MHC LICENSE #:
SIGNATURE: HARRY SHUMAN
PLANS: CONG 2 PLAT 7 PLAT 1 DATA
TERMIN: 11 Hawthorne Ave.
CONTR: 11 Hawthorne Ave.
ENGR: 11 Hawthorne Ave.
SELLER: 11 Hawthorne Ave.

DESCRIBE PROPOSED WORK:
OWNER: HARRY SHUMAN
NO FIREPLACE. (Recorded by deed)
Liber 7055 Folio 100. New 2nd size
40' x 114' lot # 212. (20' x 54' 6" x 26')
23 bedrooms 3, 436 SF

TYPE OF USE
RESIDENTIAL
01. ONE FAMILY
02. TWO FAMILY
03. THREE AND FOUR FAMILY
04. FIVE OR MORE FAMILY
05. SWIMMING POOL
06. GARAGE
07. OTHER

TYPE FOUNDATION
1. SLAB
2. BLOCK
3. CONCRETE

TYPE OF CONSTRUCTION
1. MASONRY
2. WOOD FRAME
3. STRUCTURE STEEL
4. REINFORCED CONCRETE

TYPE OF HEATING FUEL
1. GAS
2. ELECTRICITY
3. OIL
4. COAL

TYPE OF SEWAGE DISPOSAL
1. PUBLIC SEWER
2. PRIVATE SYSTEM
3. SEPTIC
4. OTHER

OWNERSHIP
1. PRIVATELY OWNED
2. PUBLICLY OWNED
3. SALE
4. RENTAL

RESIDENTIAL CATEGORY
1. DETACHED
2. SEMI-DET.
3. GROUP
4. TOWNHOUSE
5. MIDRISE
6. HIGHRISE

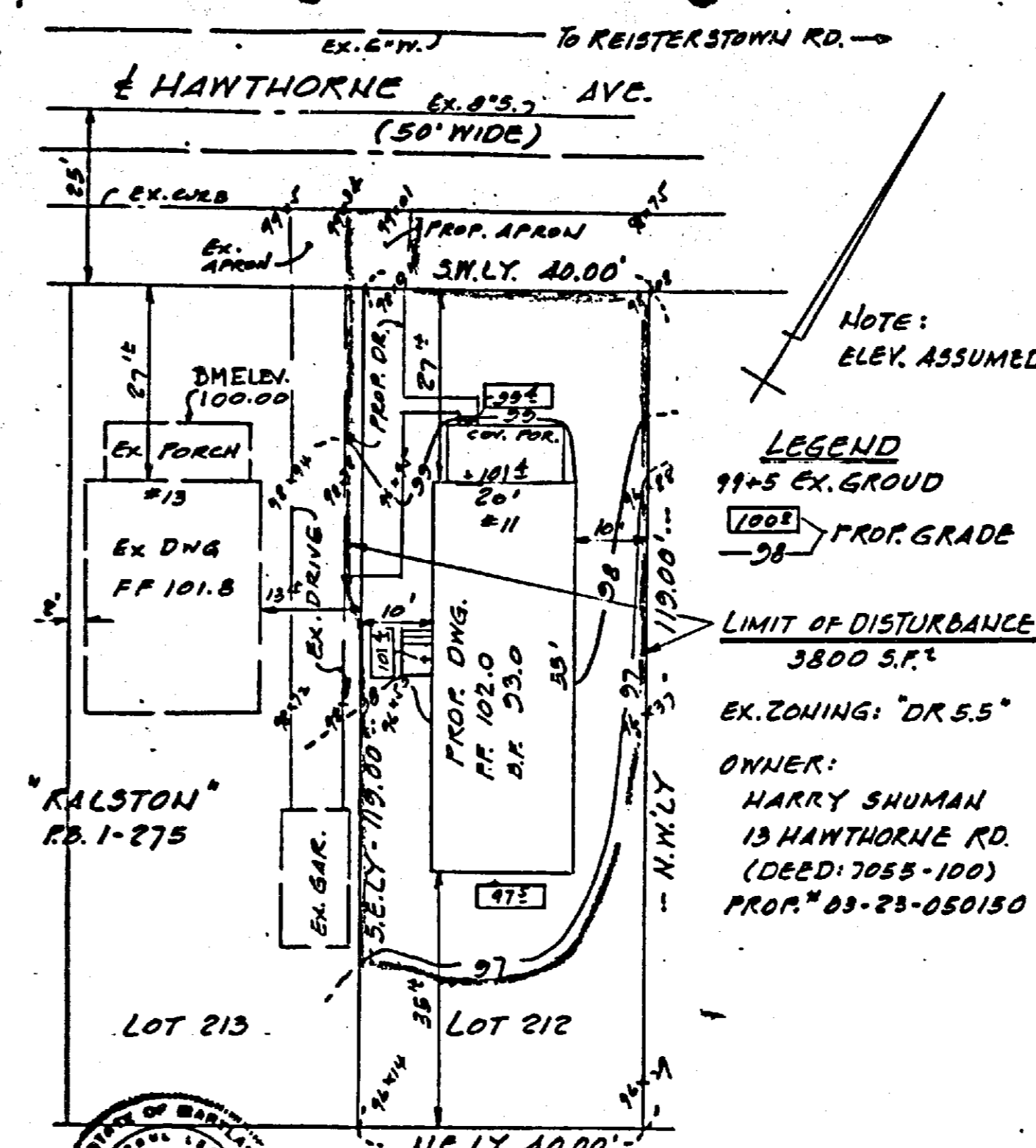
ESTIMATED COST
1. MATERIALS AND LABOR
2. PERMIT
3. OTHER

APPROVAL SIGNATURES
DATE

BUILDING SIZE
FLOOR 3, 436 SF
LOT SIZE 40' x 114' 6"
WIDTH 40'
DEPTH 114' 6"
HEIGHT 35'
STORIES 3
LOT # 212
CORNER LOT
1. YES 2. NO

APPROVAL SIGNATURES
DATE

4/90



SITE PLAN
11 HAWTHORNE AVE.
3RD ELEC. DIST. BALTO. CO. MD.
SCALE: 1" = 20' JULY 24, 1990

Paul P. Engineering, Inc.
304 W. Pennsylvania Ave.
Towson, Maryland 21204

TO: John R. Reisinger
Buildings Engineer
August 7, 1990

FROM: James E. Dyer
Zoning Supervisor

SUBJECT: Zoning Denial
New Dwelling Application
Owner: Harry Shuman
3rd Election District

The above application for 11 Hawthorne Avenue was denied by this office for the following reasons:

Failure to comply with lot width requirements for small lots in the DR 5.5 zone.

Section 1802.3 -- Special Regulations for Certain Existing Developments or Subdivisions and for Small Lots or Tracts in D.R. Zones. (Bill No. 100, 1970)

Sub-Section 1802.3.A.5. Any lot or tract of lots in single ownership which is in a duly recorded subdivision plat not approved by the Baltimore County Planning Board or Planning Commission. (Bill No. 100, 1970)

Sub-Section 1802.3.B "-----Standards for development of lots or tracts described in Subparagraphs A.3., A.4., A.5. shall be as set forth in Paragraph C, below. Bill No. 100, 1970.)

Sub-Section 1802.3.C.1 ----- DR 5.5. minimum lot width 55.0

Section 304 "Use of undersized single-family lots"

Section 304 does not apply, i.e. subparagraph C stipulates that the owner must not own sufficient adjoining land to conform substantially with the width and area requirements. In this instance the owner owns the adjoining 40' lot and dwelling and as such presently complies with the lot width requirements of 55 feet as set forth in Section 1802.3.C.

To interpret the above sections so as to permit dwellings to be built on each of the two adjoining lots owned by the same person would violate the clear intent of said regulations. In this instance proper relief could only be granted upon petition for a variance to the lot width requirements for both lots and proof that hardship and or practical difficulty exists and relief will not be detrimental to the health, safety and general welfare of the adjoining community. It should be noted that such was requested by Mr. Shuman and was denied by Order of the Board of Appeals.

JED:cer

James E. Dyer

RE: ZONING DENIAL
NEW DWG. APPL.
OWNER: HARRY SHUMAN
11 HAWTHORNE RD
3RD ELEC DIST.

THE ABOVE APPL. WAS DENIED BY THIS OFFICE FOR THE FOLLOWING REASONS:

1) FAILURE TO COMPLY WITH LOT WIDTH REQUIREMENTS FOR SMALL LOTS IN THE DR 5.5 ZONE.

SECTION 1802.3 "SPECIAL REGULATIONS"

SUB-SECTION 1802.3.A.5. ANY LOT OR TRACT OF LOTS

SUB-SECTION 1802.3.B "STANDARDS FOR DEVELOPMENT OF LOTS OR TRACTS DESCRIBED IN SUBPARAGRAPHS A.3, A.4 OR A.5. SHALL BE AS SET FORTH IN PARAGRAPH C BELOW"

SUB-SECTION 1802.3.C "DR 5.5 MINIMUM LOT WIDTH 55.0"

SECTION 304 "USE OF UNDERSIZED SINGLE FAMILY LOTS"

SECTION 304 DOES NOT APPLY, I.E. SUBPARAGRAPH C STIPULATES THAT THE OWNER MUST NOT OWN SUFFICIENT ADJOINING LAND TO CONFORM SUBSTANTIALLY WITH THE WIDTH AND AREA REQUIREMENTS. IN THIS INSTANCE THE OWNER

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 287-3333

J. Robert Haines
Zoning Commissioner

September 10, 1990

Dennis F. Rasmussen
County Executive

Mr. S. Eric DiNenna, P.A.
Suite 600
409 Washington Avenue
Towson, Maryland 21204

RE: Undersized Single Family Lots

Dear Mr. DiNenna:

The purpose of this letter is to establish/clarify the long-standing position of this office regarding undersized building lots.

Undersized single family lots were being recorded in subdivision plats many years prior to the first zoning regulations which took effect in 1945. Some of these lots with widths of 20 to 25 feet were used as come-ons by developers who would give a lot free to anyone who purchased an adjoining lot. Therefore, it is a well known fact that even prior to zoning regulations in 1945, undersized lots existed that were never intended to be buildable in and of themselves.

The 1945 Edition of the Baltimore County Zoning Regulations (BCZR) recognized and placed a condition on the development of these lots:

SECTION X - GENERAL EXCEPTIONS TO USE AND AREA REQUIREMENTS

I. A lot having a width of less than fifty feet at the front building line and which corresponds in location and lot lines with a lot on a plat or in a deed adopted or recorded prior to the adoption of these regulations, may have minimum side yards five feet in width along each side lot line, except in case of corner lot the side yard along the side street shall not be less than eleven feet.

It is abundantly clear that even a modest setback of five feet (each side) would preclude building a dwelling on a single 20 or 25 foot lot; i.e., a single family dwelling with a width of 10' or 15' is not feasible.

The 1955 edition of the BCZR established a special regulation for undersized lots placing more modern and restrictive standards for development of such lots:

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 287-3333

J. Robert Haines
Zoning Commissioner

September 14, 1990

Dennis F. Rasmussen
County Executive

Mr. S. Eric DiNenna, P.A.
Suite 600
409 Washington Avenue
Towson, Maryland 21204

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Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 287-3333

J. Robert Haines
Zoning Commissioner

October 2, 1990

Dennis F. Rasmussen
County Executive

Mr. S. Eric DiNenna, P.A.
Suite 600
409 Washington Avenue
Towson, Maryland 21204

RE: Lot 212 - Jerry Shuman

Case No. 89-55-A

Dear Mr. DiNenna:

You have asked that I review the status of lot 212 for Jerry Shuman. We have met and discussed this matter on several occasions and I am not persuaded that the reading of Section 304 of the Baltimore County Zoning Regulations would permit development of this lot as a matter of right. I will attempt to explain my position relative to these undersized lots in this letter.

The 1945 Edition of the Baltimore County Zoning Regulations (BCZR) recognized and placed a condition on the development of these lots:

SECTION X - GENERAL EXCEPTIONS TO USE AND AREA REQUIREMENTS

I. A lot having a width of less than fifty feet at the front building line and which corresponds in location and lot lines with a lot on a plat or in a deed adopted or recorded prior to the adoption of these regulations, may have minimum side yards five feet in width along each side lot line, except in case of corner lot the side yard along the side street shall not be less than eleven feet.

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